D.T.E. 03-40-B

Petition of Boston Gas Company d/b/a KeySpan Energy Delivery New England, pursuant to General Laws Chapter 164, § 94, and 220 C.M.R. § 5.00 et seq., for a General Increase in Gas Rates.

ORDER ON BOSTON GAS COMPANY'S MOTION FOR RECALCULATION, OR IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION

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I. INTRODUCTION

On October 31, 2003, the Department of Telecommunications and Energy ("Department") issued an Order in Boston Gas Company, D.T.E. 03-40 (2003). On November 7, 2003, the Boston Gas Company ("Boston Gas" or "Company") filed a motion for recalculation, or in the alternative, a motion for reconsideration ("Motion") regarding two issues determined in the Order: (1) the inflation adjustment, and (2) the incentive compensation adjustment. On November 17, 2003, the Attorney General of the Commonwealth of Massachusetts ("Attorney General") filed an opposition to the Company's Motion ("Opposition"). On November 21, 2003, the Company filed a reply to the Attorney General's Opposition ("Reply").[1]

II. POSITIONS OF THE PARTIES

A. Boston Gas Company

1. Inflation Adjustment

In its Order, the Department removed all expenses recovered through the cost of gas adjustment clause ("CGAC") from the Company's residual operations and maintenance ("O&M") balance. D.T.E. 03-40, at 257. Therefore, the Department excluded $25,588,070 from the Company's residual O&M expense balance, which, when combined with other

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[1] The Attorney General and the Company each filed motions to extend the judicial appeal period, on November 14, 2003 and November 20, 2003, respectively. These motions are addressed in Boston Gas Company, D.T.E. 03-40-A (2003).

adjustments, resulted in a residual O&M balance of $28,545,156 and an inflation allowance of $1,498,621. Id. at 257.

Boston Gas contends that, while the Department excluded both $25,588,070 in expenses recovered through the CGAC and $15,503,342 in test-year bad debt expense from the Company's residual O&M expense balance, the O&M expense recovered through the CGAC also includes $10,263,072 in bad debt expense (Motion at 4). Therefore, the Company contends that the Department has double-counted the bad debt expense deduction, thereby understating the residual O&M expense balance (id. at 4-5). Boston Gas states that, after making this correction, the residual O&M expense balance should be $38,808,228 and the inflation allowance should be $2,037,432, thereby increasing the Company's cost of service by $538,811 (id. at 5, App. 1, at 6).

2. Incentive Compensation Adjustment

In D.T.E. 03-40, at 128, the Department found that O&M expenses for the incentive compensation adjustment should only include an expense amount. Therefore, the Department directed the Company to expense 66.3 percent of the incentive compensation adjustment. This accounting treatment reduced the Company's proposed incentive compensation adjustment by $755,460 (from $2,241,721 to $1,486,261). Id. Boston Gas argues that the reduced incentive compensation adjustment approved by the Department is in error because (1) it includes amounts that are associated with an accounting entry that does not affect the Company's

revenue requirement, and (2) the incentive compensation amounts included in the Company's proposed cost of service were already capitalized at the service company[2] level (Motion at 5).

First, Boston Gas argues that, contrary to the Department's findings that the proposed incentive compensation adjustment was an increase to test-year O&M expense, it was mostly an accounting adjustment that did not affect the Company's revenue requirement (id. at 5-6, citing D.T.E. 03-40, at 120; Exh. KEDNE/PJM-1, at 12). According to the Company, this accounting adjustment removed the effect of a journal entry made in 2002 to reverse a 2001 over-accrual of $2,097,330 in incentive compensation expense (Motion at 7). The Company claims that, similar to the severance adjustment that was approved by the Department, this accounting adjustment restores the actual test-year cost of service for ratemaking purposes (id. at 7-8, citing D.T.E. 03-40, at 137). Therefore, the Company avers that the $2,097,330 adjustment does not represent an increase to the incentive compensation expenses over and above the test-year levels (id. at 8).[3]

Second, the Company argues that the proposed incentive compensation adjustment includes only expense amounts incurred by the service company, KeySpan Corporate Services,

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[2] Boston Gas is a wholly-owned subsidiary of Keyspan Corporation ("Keyspan"). D.T.E. 03-40, at 1. Keyspan carries out any sharing of services among its affiliates through a centralized service company, KeySpan Corporate Services, L.L.P. Id. at 3, 185.

[3] Specifically, the Company argues that its proposed incentive compensation adjustment of $2,241,721 was composed of three elements: (1) a $2,097,330 adjustment to remove the effect of the 2002 journal entry made to reverse the over-accrual from 2001; (2) a $13,866 adjustment to reduce the test-year amount of direct incentive compensation to the target level; and (3) a $158,257 adjustment to increase the test-year amount of service company incentive compensation to the target level (Motion at 7).

L.L.C. ("Keyspan Services") and then allocated to Boston Gas. The Company argues that these allocated amounts are expenses, already exclusive of capitalized amounts (id. at 10, citing Exh. KEDNE/PJM-1, at 12). The Company states that, while it did not capitalize its reported test-year incentive compensation, it is immaterial to cost of service as this was an offsetting adjustment which is only dependent on both components of the calculations being either capitalized or expensed (Reply at 1-2, citing Exh. KEDNE/PJM-2, at 8). In fact, Boston Gas claims that if both elements had been expensed it would have resulted in a $4,673 increase to cost of service, which the Company is not seeking to recover (id. at 2, citing Motion at 9, n.5).

In addition, the Company avers that even though the elements of the test-year adjustment were not capitalized for the purpose of the incentive compensation adjustment, the record demonstrates that the amounts in question were properly expensed when they were charged to test-year O&M (id. at 2, citing Exh. KEDNE/PJM-2 [supp.] at 16). Specifically, the Company states that while it paid out $1,125,741 in incentive compensation for labor costs incurred directly by Boston Gas in 2002, only $718,356 was included in test-year O&M (Reply at 2). The Company argues that the same analysis also applies to the adjustment for the allocation of incentive compensation from Keyspan Services (id. at 3, citing Exhs. KEDNE/PJM-2, at 8; KEDNE/PJM-2 [supp.] at 17). Therefore, the Company avers that it is not appropriate to further capitalize its test-year incentive compensation adjustment (Motion at 10). Accordingly, the Company requests that the Department

reconsider the allowed level of incentive compensation expense to restore the $755,460 that was eliminated through the expense/capitalization calculation (id.).

B. Attorney General

As an initial matter, the Attorney General argues that the Company's Motion should be considered under the Department's standard for a motion for reconsideration. Unlike a motion for recalculation that merely seeks change where there is a computational error or if the schedules are inconsistent with the findings and conclusions in the body of an order, the Attorney General argues that the Company, in its Motion, requests the Department to change its analysis and reverse its findings and directives (Opposition at 1).

The Attorney General did not comment on the inflation adjustment issue. With respect to the incentive compensation adjustment, the Attorney General contends that Boston Gas has failed to demonstrate that it capitalized any of the pro forma incentive compensation payments made during the test-year (id. at 2). The Attorney General states that, while the Company may have capitalized some of test-year incentive compensation, the record is clear that Boston Gas did not capitalize a portion of the incentive compensation adjustment (id., citing Exhs. KEDNE/PJM-2, at 8, lines 8-9; KEDNE/PJM-2 [supp.] at 45-46; AG 6-21). In addition, the Attorney General argues that the Company has failed to show that Keyspan Services capitalized any of the incentive compensation (Opposition at 2). In fact, the Attorney General argues that it would be unusual for Keyspan Services to capitalize the distribution company's overhead costs at the service company level rather than at the distribution company

level where these costs could be included in Boston Gas' plant in service (id., citing Exh. AG 6-21, at 36).

The Attorney General disputes the Company's claim that its treatment of the severance adjustment provides some evidence for the appropriate treatment of the incentive compensation adjustment (Opposition at 2). The Attorney General argues that, with the severance adjustment, Boston Gas removed the entire amount from cost of service and, therefore, it was not necessary to determine whether the Company capitalized any portion of its severance adjustment (id.). The Attorney General concludes that, because there is no evidence that the Department's treatment of the incentive compensation issue was a product of inadvertence or mistake, or that extraordinary circumstances merit a second look, the Company's Motion should be denied (id. at 3).

III. STANDARD OF REVIEW

While the Company has characterized its request as one for recalculation, or in the alternative, reconsideration, a review of Boston Gas' arguments indicates that it is seeking reconsideration of the items at issue. The Department's procedural rule, 220 C.M.R. § 1.11(9), authorizes a party to file a motion for recalculation based on an alleged inadvertent error in a calculation contained in a final Department Order. The Department grants motions for recalculation in instances where an Order contains a computational error or if schedules in the Order are inconsistent with the findings and conclusions contained in the body of the Order. Western Massachusetts Electric Company, D.P.U. 89-255-A at 4 (1990); Essex County Gas Company, D.P.U. 87-59A at 1-2 (1988). However, Boston Gas requests that the

Department reverse its findings on the inflation and incentive compensation issues, essentially contending that the Department's determination on these issues was the result of mistake or inadvertence. Therefore, we will apply the standard for reconsideration.

The Department's procedural rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within twenty days of service of a final Department Order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1981).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or

inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

IV. ANALYSIS AND FINDINGS

A. Inflation Adjustment

In D.T.E. 03-40, at 257, the Department excluded from the Company's residual O&M expense balance both $25,588,070 in expenses recovered through the CGAC and $15,503,342 in test-year bad debt expense. The proposed inflation allowance submitted as part of the Company's initial filing included an inflation allowance on cost of service items that had already been adjusted, such as advertising expense. D.T.E. 03-40, at 256. Had the Company's proposed inflation allowance calculation comported with Department precedent, we may have been more readily able to identify whether a separate adjustment for uncollectible expense would have created an excessive deduction in the inflation allowance calculation. Nevertheless, the Department is now persuaded that the O&M expense recovered through the CGAC already includes $10,263,072 in bad debt expense, which is a separate offset to the residual O&M balance (Exh. KEDNE/PJM-2, at 21-22). As a result, through inadvertence, the bad debt portion of O&M expense has been removed twice from the Company's inflation allowance. Therefore, the Department grants the Company's request for reconsideration of the inflation adjustment.

After making the necessary adjustment, the correct residual O&M expense balance is $38,808,228, and the correct inflation allowance is $2,037,432. Accordingly, the Company's

cost of service will be increased by $538,811 (As shown on revised Table 1 and Schedule 2, attached).[4]

B. Incentive Compensation Adjustment

The Attorney General raised the issue of the capitalization of the incentive compensation adjustment in his initial brief. There, the Attorney General argued that the Company failed to capitalize any portion of the incentive compensation program. D.T.E. 03-40, at 123, citing Attorney General Brief at 72; Exh. KEDNE/PJM-2, at 8-9. The Company did not address the issue of the capitalization of the incentive compensation adjustment in either its initial or reply briefs.

Unable to distinguish Boston Gas' treatment of the incentive compensation adjustment from its treatment of a similar adjustment related to the transition of management employees from base pay to variable pay where the Company specifically stated that the amounts in question were net of capitalization, the Department found that the broader incentive compensation adjustment should also only include an expense amount. D.T.E. 03-40, at 128, citing Exh. KEDNE/PJM-1, at 13. Consequently, the Department directed the Company to capitalize $755,460 of the incentive compensation adjustment.[5] D.T.E. 03-40, at 128.

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[4] The revised schedules attached to this Order incorporate the effects on the Company's revenue requirement resulting both from the findings in this Order as well as our disposition of a separate motion for clarification and reconsideration in D.T.E. 03-40-A.

[5] According to the Company, 66.3 percent of the adjustment related to the transition from base pay to variable pay was charged to O&M. D.T.E. 03-40, at 128, n.57, citing Exh. KEDNE/PJM-2, at 9. Therefore, the Department directed the Company to

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In its Motion, the Company cites to two pages of testimony as evidence that the incentive compensation adjustment was net of capitalization (Exh. KEDNE/PJM-2 [supp.] at 39-40). These pages demonstrate that the Company booked the $2,097,330 accounting adjustment to Account 930, which is the general and administrative expense account (id.). Because Account 930 is used for expense items, which are net of capitalization, these pages demonstrate that the portion of the incentive compensation adjustment related to Boston Gas is net of capitalization. As a result, through inadvertence, we directed the Company to capitalize an amount which was already net of capitalization. Therefore, the Department grants the Company's request for reconsideration regarding the capitalization of $2,083,464[6] of the $2,241,721 incentive compensation adjustment. The Company shall be permitted include the entire $2,083,464 test-year expense for direct incentive compensation payments in its cost of service.

The remaining amount of the Company's proposed incentive compensation adjustment is $158,257 for Keyspan Services-related incentive compensation. Boston Gas argues that the Keyspan Services-related incentive compensation amounts are also net of capitalization (Reply at 3, citing Exh. KEDNE/PJM-2 [supp.] at 17). However, unlike the direct incentive

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[5] (...continued)
expense 66.3 percent of its incentive compensation adjustment, reducing the adjustment from $2,241,721 to $1,486,261. D.T.E. 03-40, at 128.

[6] The difference between the $2,097,330 accounting adjustment and the allowed amount of $2,083,464 is the $13,866 adjustment to reduce the test-year amount of direct incentive compensation to the target level (Exh. KEDNE/PJM-2, at 8). The Company is not seeking reconsideration of this amount.

compensation charges, the Company has not demonstrated that the portion of the incentive compensation adjustment related to Keyspan Services is net of capitalization. The schedule cited by the Company detailing total employee compensation expense included in test-year cost of service (Exh. KEDNE/PJM-2 [supp.] at 17) does not support Boston Gas' claim.

The Company claims that the cited values of service-company related incentive compensation expense amount that were included in test-year cost of service total $2,910,114, and are "approximately 16.82 percent" of the total incentive compensation amount of $17,305,603 accrued by Keyspan Services in 2002 (Reply at 3, citing Exh. KEDNE/PJM-2, at 8). First, although the Company claims that the cited values on the schedule sum to $2,910,114, they, in fact, add to $3,260,930, which is approximately 18.84 percent of the total incentive compensation amount accrued by Keyspan Services in 2002 (see Reply at 3, citing Exh. KEDNE/PJM-2 [supp.] at 17). Second, assuming that Boston Gas had summed the amounts correctly, the Company does not explain the relevance of the amounts being approximately 16.82 percent of the total incentive compensation amount accrued by Keyspan Services in 2002. Even if the Company had argued that this value supports the amount of the total incentive compensation accrued by Keyspan Services in 2002 that were allocated to Boston Gas, nowhere in the Company's incentive compensation adjustment does a value of 16.82 percent appear. Rather, the evidence shows that 15.9 percent of the total 2002 Keyspan Services incentive compensation amounts were allocated to Boston Gas (Exh. KEDNE/PJM-2, at 8).

The Company claims, without evidentiary support, that these costs had been capitalized at the service company level (Motion at 9-10). However, it would be unusual for a company to capitalize such expenses at the service company level rather than at the distribution company level, where these costs would be included in the distribution company's plant in service. The Company has not shown that Keyspan Services-related incentive compensation adjustment has been capitalized, and, as a result, has not shown that the Department's finding regarding these amounts was the result of mistake or inadvertence.[7] Therefore, the Department denies the Company's request for reconsideration regarding the capitalization of $158,257 of the $2,241,721 incentive compensation adjustment. Consistent with our findings in D.T.E. 03-40, at 128, the Company shall expense 66.3 percent of Keyspan Service-related incentive compensation adjustment, which reduces the adjustment from $158,257 to $104,924. With the direct incentive compensation adjustment of $2,083,464 approved above, the Company shall be permitted to include a total incentive compensation adjustment of $2,188,388 in its test-year cost of service. Accordingly, Boston Gas' cost of service will be increased by $702,127 (as shown on revised Schedule 2, attached).

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[7] Consistent with what we held at page 10, above, the adjustment sought here is not per se impermissible. It is merely that a sufficient evidentiary showing has not been made to support this allowance.

V. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That Boston Gas Company's Motion for Reconsideration is GRANTED in part and DENIED in part; and it is

FURTHER ORDERED: That Boston Gas Company may file within seven days revised rates and schedules that are consistent with the directives of D.T.E. 03-40 as amended by this Order; and it is

FURTHER ORDERED: That Boston Gas Company shall comply with all directives contained in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner